

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VASUDEVAN SOFTWARE, INC.,

Plaintiff,

v.

TIBCO SOFTWARE INC.,

Defendant.

CASE NO. 11-CV-06638-RS-PSG

**DECLARATION OF MATTHEW
SARBORARIA IN SUPPORT OF
VASUDEVAN SOFTWARE, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

Hon. Richard Seeborg

1 I, Matthew Sarboraria, hereby declare as follows:

2 1. I am employed by Oracle Corporation (“Oracle”) as Associate General
3 Counsel and I am a member of the State Bar of California. I was counsel of record for Oracle in
4 the related case *Vasudevan Software, Inc. v. International Business Machines Corporation and*
5 *Oracle Corporation*, Case No. 5:09-CV-05897 RS-PSG (N.D.Cal.). I submit this declaration in
6 support of VSI’s Administrative Motion to File Under Seal Pursuant to Civil Local Rule 79-
7 5(b)&(d) (Dkt. No. 183). I have personal knowledge of the facts set forth in this declaration and,
8 if called upon as a witness, I could and would testify to such facts under oath.

9 2. On August 8, 2013, Vasudevan Software, Inc. (“VSI”) filed its Opposition
10 to TIBCO’s Motion for Summary Judgment of Invalidity of U.S. Patent No. 7,167,864 Due to
11 Obviousness (the “VSI Opposition Brief”) (Dkt. No. 184). The contemporaneously filed
12 Declaration of Eric Enger in Support of VSI’s Opposition to TIBCO’s Motion for Summary
13 Judgment of Invalidity of U.S. Patent No. 7,167,864 Due to Obviousness (the “Enger
14 Declaration”) (Dkt. No. 184 Attachment #5) includes as exhibits certain documents produced by
15 Oracle to VSI in third party discovery in this case and a copy of a confidential patent license
16 agreement between VSI and Oracle.

17 3. Exhibit 14 to the Enger Declaration is a Patent License Agreement entered
18 into by Oracle and VSI on October 4, 2011 as part of their settlement agreement in the above-
19 referenced related case. The terms of the settlement, including the patent license, are confidential.
20 The parties negotiated the settlement with the expectation and agreement that its terms would be
21 treated as confidential, as reflected by the provisions of the Patent License Agreement itself,
22 including Section 6.11. Oracle has maintained the agreement in confidence since its inception. To
23 the best of Oracle’s knowledge, VSI has done the same, disclosing the agreement in subsequent
24 litigation only under a “Highly Confidential – Attorneys’ Eyes Only” protective order designation.

25 4. Public disclosure of the Patent License Agreement or its terms would harm
26 Oracle because it would provide third parties, including adverse parties in pending and future
27 patent assertions and litigation involving Oracle, non-public information about the structure,
28 scope, terms, and valuation of Oracle’s prior litigation settlement and patent licensing.

1 Additionally, public disclosure of the agreement would harm the public generally by causing a
2 chilling effect on settlements and settlement discussions that are undertaken on the condition that
3 such discussions and resulting agreements will be held in confidence. Oracle therefore
4 respectfully requests that Exhibit 14 of the Enger Declaration remain sealed.

5 5. It is Oracle's understanding that the VSI Opposition Brief (Dkt. No. 184)
6 contains references to the terms of the Patent License Agreement discussed above, including the
7 settlement amount, on page 3 at line 19 and page 20 at line 21. These references have been
8 redacted in the publicly-filed copy of the VSI Opposition Brief. For the same reasons set forth
9 above regarding disclosure of the Patent License Agreement itself, Oracle respectfully requests
10 that the portions of the VSI Opposition Brief referencing the terms of the Patent License
11 Agreement remain sealed.

12 I declare under penalty of perjury under the laws of the United States of America
13 that the foregoing is true and correct.

14 Executed on August 15, 2013, at Redwood City, CA.

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16 By: /s/ Matthew Sarboraria
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the foregoing document, entitled “**DECLARATION OF MATTHEW SARBORARIA IN SUPPORT OF VASUDEVAN SOFTWARE, INC.’S ADMINISTRATIVE MOTION TO FILE UNDER SEAL**” via the Court’s CM/ECF system per Civ. L.R. 5-1(h)(1) on this 15th day of August 2013.

Executed on August 15, 2013 at San Francisco, California.

By: /s/ Kevin Smith

ATTESTATION OF CONCURRENCE

I, Kevin Smith, am the ECF User whose ID and password are being used to file this document. In compliance with General Order 45, X.B., I hereby attest that Matthew Sarboraria has concurred in this filing.

DATED: August 15, 2013

By: /s/ Kevin A. Smith